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FOCUS POINT NEWSLETTER
FOCUS POINT COVID ALERT 5/7/2020

CMS published on 5/6/2020 - QSO-20-29-NH Interim Final Rule Updating Requirements for Notification of Confirmed and Suspected COVID-19 Cases Among Residents and Staff in Nursing Homes. The memo in detail may be found a**t: https://www.cms.gov/files/document/qso-20-29-nh.pdf.** Key Points include:

- **COVID-19 Reporting Requirements**: CMS is requiring nursing homes to report COVID-19 facility data to the Centers for Disease Control and Prevention (CDC) and to residents, their representatives, and families of residents in facilities.
- **Enforcement:** Failure to report in accordance with 42 CFR §483.80(g) can result in an enforcement action.
- **Updated Survey Tools:** CMS has updated the COVID-19 Focused Survey for Nursing Homes, Entrance Conference Worksheet, COVID-19 Focused Survey Protocol, and Summary of the COVID-19 Focused Survey for Nursing Homes to reflect COVID-19 reporting requirements.
- **COVID-19 Tags**: F884 and F885.
- **Transparency:** CMS will begin posting data from the CDC National Healthcare Safety Network (NHSN) for viewing by facilities, stakeholders, or the general public. The COVID-19 public use file will be available on https://data.cms.gov/.

COVID-19 Reporting Requirements

- *Reporting to CDC utilizing NHSN*- Electronically report information about COVID-19 in a standardized format specified by the Secretary. This report must include but is not limited to:
    - Suspected and confirmed COVID-19 infections among residents and staff, including residents previously treated for COVID-19
    - Total deaths and COVID-19 deaths among residents and staff
    - Personal protective equipment and hand hygiene supplies in the facility
    - Ventilator capacity and supplies in the facility
    - Resident beds and census
    - Access to COVID-19 testing while the resident is in the facility
    - Staffing shortages; and
    - Other information specified by the Secretary
- Provide the information specified in paragraph (g)(1) of this section at a frequency specified by the Secretary, but no less than weekly to the Centers for Disease Control and Prevention's National Healthcare Safety Network. This information will be posted publicly by CMS to support protecting the health and safety of residents, personnel, and the general public.
    - The memo provides specific instructions for enrolling and accessing the NHSN site, for NHSN questions, please email: NHSN@cdc.gov and add "LTCF" in the subject header. Additional training is available on the CDC "LTCF" website https://www.cdc.gov/nhsn/ltc/index.html.
    - **Facilities must submit their first set of data by 11:59 p.m. Sunday, May 17, 2020**. To be compliant with the new requirement, facilities must submit the data through the NHSN reporting system at least once every seven days
        - **Enforcement:** CMS will provide facilities with an initial two-week grace period to begin reporting cases in the NHSN system (which ends at 11:59 p.m. on May 24, 2020). Facilities that fail to begin reporting after the third week (by 11:59 p.m. on May 31st) will receive a warning letter reminding them to begin reporting the required information to CDC. For facilities that have not started reporting in the NHSN system by 11:59 p.m. on June 7th, ending the fourth week of reporting, CMS will impose a per day (PD) CMP of $1,000 for one day for the failure to report that week. For each subsequent week that

the facility fails to submit the required report, the noncompliance will result in an additional one-day PD CMP imposed at an amount increased by $500. For example, if a facility fails to report in week four (following the two-week grace period and receipt of the warning letter), it will be imposed a $1,000 one-day PD CMP for that week. If it fails to report again in week five, the noncompliance will lead to the imposition of another one-day PD CMP in the amount of $1,500 for that failure to report (for a CMP total of $2,500). In this example, if the facility complies with the reporting requirements and submits the required report in week six, but then subsequently fails to report as required in week seven, a one-day PD CMP amount of $2,000 will be imposed (which is $500 more than the last imposed PD CMP amount) for a total of $4,500 imposed CMPs.

- For enforcement-related questions, please email: DNH_Enforcement@cms.hhs.gov

- *CMS: Q&A*
  - *Q:* Can state health departments report COVID-19 data to NHSN on a nursing home's behalf?
    - A: Yes. Each nursing home must first enroll in NHSN to submit its data. Once enrolled, state and local health departments may submit data on behalf of a nursing home. Additionally, data can be batched and submitted as a single file for multiple facilities. We note this does not relieve facilities of their accountability to report in accordance with the regulation. CDC and CMS will work with state health departments and other partners to enable batch data reporting by state health departments or other entities (such as state hospital associations, corporate headquarters, and IT vendors). CDC and CMS will work with state health departments and other partners to communicate and help them utilize this option.
      - *NOTE: Check with your state authority about their ability to do this*
  - Q: Will CMS cite facilities for noncompliance at F884 and penalize any nursing home with a case of COVID-19 reported to CDC's NHSN?
    - *A:* The presence of COVID-19 in a nursing home does not automatically mean that noncompliance exists. CMS will not use the data to penalize nursing homes for the presence of COVID-19. Until further notice, surveys will continue to be conducted in accordance with CMS memorandum QSO-20-20-All, which includes surveying for Immediate Jeopardy allegations and Focused Infection Control surveys. CMS has updated the COVID-19 Focused Survey for Nursing Homes with processes related to the new reporting requirements. Surveyors will only cite noncompliance with federal requirements for infection control and prevention based on their investigations, and not based on the COVID-19 information reported through the NHSN system.
  - Q: Must a facility report death of residents which occur in hospitals to the NHSN's LTCF COVID-19 Module?
    - A: Yes, the LTCF COVID-19 Module does include reporting of deaths in another location. This is clarified in the COVID-19 module instructions that facilities will use when reporting on resident impact and facility capacity.

Posting Facility-Level COVID-19 Data -- Reporting COVID-19 data supports CMS's responsibility to protect and ensure the health and safety of residents and is necessary to ensure the appropriate tracking, response, and mitigation of the spread and impact of COVID-19 on our most vulnerable citizens, personnel who care for them, and the general public. The information provided may be used to inform residents, families, and communities of the status of COVID-19 infections in their area. We believe that this action strengthens CMS's response to the COVID-19 pandemic and reaffirms our commitment to transparency and protecting the health and safety of nursing home residents. CMS anticipates publicly posting CDC's NHSN data (including facility names, number of COVID-19 suspected, and confirmed cases, deaths, and other data as determined appropriate) weekly on https://data.cms.gov/ by the end of May.

Reporting to: Residents, Representatives, and Families -- Inform residents, their representatives, and families of those residing in facilities by 5p.m. the next calendar day following the occurrence of either a single confirmed infection of COVID-19, or three or more residents or staff with new-onset of respiratory symptoms occurring within 72 hours of each other. This information must:

- Not include personally identifiable information;
- Include information on mitigating actions implemented to prevent or reduce the risk of transmission, including if normal operations of the facility will be altered; and
- Include any cumulative updates for residents, their representatives, and families at least weekly or by 5 p.m. the next calendar day following the subsequent occurrence of either: each time a confirmed infection of COVID-19 is identified, or whenever three or more residents or staff with new onset of respiratory symptoms occur within 72 hours of each other.

- *CMS Q&A*
  - Q: Must the facility notify all residents, representatives, and families, or just those affected?
    - A: Facilities must notify all residents in the facility, their representatives, and families, not just those who are suspected or confirmed cases of COVID-19. Notification must include data when a confirmed COVID-19 case is identified or when three or more residents or staff have new onset of respiratory symptoms that occur within 72 hours of each other in the facility. Cumulative updates must be provided when other confirmed cases or clusters of three or more residents or staff with respiratory symptoms occur within 72 hours of each other, and at least weekly.
      - We note that there are a variety of ways that facilities can meet this requirement, such as informing families and representatives through email listservs, website postings, and/or recorded telephone messages. We do not expect facilities to make individual telephone calls to each resident's family or responsible party to inform them that a resident in the facility has laboratory-confirmed COVID-19. However, we expect facilities to make all reasonable efforts to properly inform residents, their representatives, and families of the information facilities are required to provide.
  - Q: What information is required to be reported to residents, their representatives, and families? Will this information include new cases as well as total cases?
    - A: Cumulative, confirmed COVID-19 cases as well as clusters of three or more residents or staff with respiratory symptoms within 72 hours must be reported. The facility is not required to identify new versus total cases.
  - Q: Can you clarify what symptoms CMS is referring to in the requirement to report if three or more residents or staff have respiratory symptoms within 72 hours of each other?
    - A: Respiratory symptoms consistent with COVID-19 are shortness of breath, difficulty breathing, new or change in cough, sore throat, or new loss of taste or smell. To a lesser extent, symptoms have included new sputum production, rhinorrhea, or hemoptysis. For more information on updated symptoms, please view CDC's webpages: Symptoms of Coronavirus and Preparing for COVID-19: Long-term Care Facilities, Nursing Homes.
  - Q: Must the facility report any suspected case of COVID-19 of a resident or staff member to residents, their representatives, and families?
    - A: No. The regulation does not require facilities to report to residents, their representatives, and families every suspected case of COVID-19 in residents and staff of the facility. However, it does require facilities to report suspected cases when three or more occur within 72 hours of each other.
  - Q: For dedicated COVID-19 facilities and those with COVID-19 units, must they inform residents, their representatives, and families each time a new resident with confirmed COVID-19 is admitted or staff member tests positive? Similarly, what is the time frame for notifying residents, their representatives, and families for subsequent COVID-19 activity?
    - A**:** Yes. The facility must provide any cumulative updates for residents, their representatives, and families. Updates must occur at least weekly or by 5 PM the next calendar day following the subsequent occurrence of either: a confirmed infection of COVID-19 is identified (including new admissions), or whenever three or more residents or staff with new onset of respiratory symptoms occur within 72 hours of each other.
  - Q: Who are considered "staff" for purposes of reporting confirmed cases or clusters of respiratory symptoms to residents, their representatives, and families?
    - A: "Staff" includes employees, consultants, contractors, volunteers, and caregivers who provide care and services to residents in the facility, including nurse aides that have not yet completed a

nurse aide training, competency, and evaluation program (NATCEP) but are providing services to residents.

- Q: When informing residents, their representatives, and families of suspected and confirmed COVID-19 cases in the facility, does the facility have to specify whether individual cases are residents or staff?
  - A: No. CMS does not require this.
- Q: Do facilities need to inform anyone who walks through their doors (e.g., a hospice or other healthcare provider) of the same numbers of suspected and confirmed COVID-19 cases that they are sharing with residents, their representatives, and families?
  - A: No. Facilities are not required to provide the same COVID-19 information reported to residents, their representatives, and families. However, facilities would share with the visiting healthcare provider, if the resident receiving care is suspected of, or has laboratory-confirmed COVID-19. Any precautions the provider should take while in the facility (e.g., specific personal protective equipment) will be communicated to that provider by the facility as part of their standard practices under the infection prevention and control program requirement.
- Q: What if a facility has never had a suspected or confirmed COVID-19 case? Is the facility required to inform all residents, their representatives, and families?
  - A: No. CMS does not require this; however, we encourage facilities to transparently communicate regularly with residents, their representatives, and families about the status of the facility.
- Q: What if a facility has three or more residents or staff with new onset of respiratory symptoms but not within 72 hours of each other? Does the facility still need to report this to all residents, their representatives, and families?
  - A: No. CMS does not require this.
- Q: Does the reporting requirement at 42 CFR §483.80(g)(3)(i)-(iii) (F885) fulfill the requirement at §483.10(g)(14)(i)(B), Notification of Changes (F580)?
  - A: No. The new reporting requirement at §483.80(g)(3)(i)-(iii) (F885) requires facilities to notify residents, their representatives, and families of cumulative numbers of confirmed COVID-19 cases and clusters of three or more residents or staff with respiratory symptoms within 72 hours of each other. By way of comparison, §483.10(g)(14)(i)(B) requires nursing homes to notify the resident, the resident's physician and as applicable, the resident's representative(s) of an individual resident's change in condition (F580) if he/she is suspected or confirmed to have COVID-19.

Updates to the COVID-19 Focused Survey for Nursing Homes

- CMS has updated the "COVID-19 Focused Survey for Nursing Homes," "Entrance Conference Worksheet," "COVID-19 Focused Survey Protocol," and "Summary of the COVID-19 Focused Survey for Nursing Homes" to include an updated assessment of the new requirements for facilities to report to the NHSN and to residents, their representatives, and their families. These updated forms are posted to the Survey Resources https://www.cms.gov/files/document/qso-20-29-nh.pdf folder in the COVID-19 Focused Survey sub-folder on the CMS Nursing Homes website. Surveyors should begin using these revised documents immediately, and facilities should also begin using the revised "COVID-19 Focused Survey for Nursing Homes" to perform their self-assessment. *The documents include the following new deficiency tags for citing noncompliance with the new requirements*:
  - **F884: COVID-19 Reporting to CDC** as required at §483.80(g)(1)-(2) Review for F884 will be conducted offsite by CMS Federal surveyors (state surveyors should not cite this F-tag). Following an initial reporting grace period granted to facilities, CMS will receive the CDC NHSN COVID-19 reported data and review for timely and complete reporting of all data elements. Facilities identified as not reporting will receive a deficiency citation at F884 on the CMS-2567 with a scope and severity level at an F (no actual harm with a potential for more than minimal harm that is not an Immediate Jeopardy [IJ] and that is widespread; this is a systemic failure with the potential to affect a large portion or all of the residents or employees), and be subject to an enforcement remedy imposed.
    - The NHSN Module is *not* intended as a replacement for state and local public health reporting requirements, and nursing homes are required to continue to report COVID-19 data to state and local health departments in accordance with state and local requirements via existing mechanisms

- **F885: COVID-19 Reporting to Residents, their Representatives, and Families** as required at §483.80(g)(3)(i)-(iii) Review for F885 is included in the "COVID-19 Focused Survey Protocol" and will occur onsite by State and/or Federal surveyors. If the survey finds noncompliance with this requirement, a deficiency citation at this tag will be recorded on the CMS-2567 and enforcement actions will follow the memo QSO-20-20-All. We note that there are a variety of ways that facilities can meet this requirement, such as informing families and representatives through email listservs, website postings, paper notification, and/or recorded telephone messages. CMS does not expect facilities to make individual telephone calls to each resident's family or responsible party to inform them that a resident in the facility has laboratory-confirmed COVID-19. However, we expect facilities to take reasonable efforts to make it easy for residents, their representatives, and families to obtain the information facilities are required to provide.
    - In addition, when the State Survey Agency is planning to conduct these surveys, the COVID-19 Focused Survey should be coded in the Automated Survey Process Environment (ASPEN) under "Survey Type" as U=COVID-19. If the survey is taking place with an IJ complaint investigation, the survey should be coded in ASPEN under "Survey Type" as A=complaint and U=COVID-19. This will help ensure consistent, accurate reporting.

CMS has issued multiple new blanket waivers and made modifications to others. The entire document may be found: https://www.cms.gov/files/document/covid-long-term-care-facilities.pdf. Highlights of the recent changes include:
New Waivers

- **QAPI** CMS is modifying certain QAPI program requirements—specifically, §483.75(b)–(d) and (e)(3)—to the extent necessary to narrow the scope of the QAPI program to focus on adverse events and infection control. The following sections are waived:
    - §483.75(b) Program design and scope, which includes "address all systems of care and management practices"
    - §483.75(c) Program feedback, data systems and monitoring
    - §483.75(d) Program systematic analysis and systemic action; and
    - §483.75(e)(3) Performance improvement projects
- **In-service Training** CMS is modifying certain QAPI program requirements—specifically, §483.75(b)–(d) and (e)(3)—to the extent necessary to narrow the scope of the QAPI program to focus on adverse events and infection control.
- **Detailed Information Sharing for Discharge Planning for Long-Term Care (LTC) Facilities** CMS is waiving the discharge planning requirement which requires LTC facilities to assist residents and their representatives in selecting a post-acute care provider using data, such as standardized patient assessment data, quality measures and resource use. **CMS is maintaining all other discharge planning requirements**, including the discharge plan.
- **Clinical Records** CMS is modifying the requirement which requires LTC facilities to provide a resident a copy of their records within two working days (when requested by the resident) by allowing facilities 10 working days to provide the requested record.
- **Inspection, Testing & Maintenance (ITM) under the Physical Environment** CMS is waiving certain physical environment requirements for providers including ***SNFs/NFs*** to the extent necessary to permit facilities to adjust scheduled inspection, testing and maintenance (ITM) frequencies, and activities for facility and medical equipment required by the Life Safety Code (LSC) and Health Care Facilities Code (HCFC.). **The following LSC and HCFC ITM are considered critical and are not included in this waiver:**
    - Sprinkler system monthly electric motor-driven and weekly diesel engine-driven fire pump testing.
    - Portable fire extinguisher monthly inspection.
    - Elevators with firefighters' emergency operations monthly testing.
    - Emergency generator 30 continuous minute monthly testing and associated transfer switch monthly testing.
    - Means of egress daily inspection in areas that have undergone construction, repair, alterations, or additions to ensure its ability to be used instantly in case of emergency.
    - SNFs/NFs are required to have an outside window or outside door in every sleeping room. CMS will permit a waiver of these outside window and outside door requirements to permit these providers to use facility and non-facility space that is not normally used for patient care for temporary patient care or quarantine.
- Updates to Previously Issued Regulatory Blanket Waivers

- **Resident Transfer and Discharge** CMS continues to waive requirements to allow an LTC facility to transfer or discharge residents to another LTC facility solely for the following cohorting purposes. Changes in the language regarding resident's care plans are highlighted below.
    - Transferring residents with symptoms of a respiratory infection or confirmed diagnosis of COVID-19 to another facility that agrees to accept each specific resident and is dedicated to the care of such residents.
    - Transferring residents without symptoms of a respiratory infection or confirmed to not have COVID-19 to another facility that agrees to accept each specific resident, and is dedicated to the care of such residents to prevent them from acquiring COVID-19, as well as providing treatment or therapy for other conditions as required by the resident's plan of care; or
    - Transferring residents without symptoms of a respiratory infection to another facility that agrees to accept each specific resident to observe for any signs or symptoms of a respiratory infection over 14 days.
- **Waive Pre-Admission Screening and Annual Resident Review (PASARR)** CMS is allowing nursing homes to admit new residents who have not received Level 1 or Level 2 Preadmission Screening. Level 1 assessments may be performed post-admission. On or before the 30th day of admission, new patients admitted to nursing homes with a mental illness (MI) or intellectual disability (ID) should be referred promptly by the nursing home to State PASARR program for Level 2 Resident Review.
    - Note: This language is included in the summary waiver list for all providers and differs slightly from the text in the LTC specific waiver summary.
- **Telehealth** CMS is waiving the requirements of section 1834(m)(4)(E) of the Act and 42 CFR § 410.78 (b)(2) which specify the types of practitioners that may bill for their services when furnished as Medicare telehealth services from the distant site.
    - This waiver expands the types of health care professionals that can furnish distant site telehealth services to include all those that are eligible to bill Medicare for their professional services.
    - This allows health care professionals who were previously ineligible to furnish and bill for Medicare telehealth services, including physical therapists, occupational therapists, speech language pathologists, and others, to receive payment for Medicare telehealth services.
    - May impact SNFs that furnish outpatient therapy in AL, IL, and the community. CMS did not provide billing guidance –SNF providers contact their MAC for guidance.
- CMS Delays Implementation of New MDS Items (Transfer of Health Information and Certain SPADES) Adopted **for** the SNF QRP for 2 Year The interim final rule from CMS also delays implementation of new MDS items for SNF QRP as described below:
    - This delay will enable SNFs to continue using the current version of the MDS 3.0 v1.17.1
    - CMS will require SNFs to collect data on the transfer of health information measures and SPADES data on October 1 of the 1st of the year that is at least two full fiscal years after the end of the COVID-19 public health emergency.
    - CMS will work with SNFs prior to implementation to address questions related to training and software update needs.

An Option for Obtaining PPE

Obtaining personal protective equipment (PPE) continues to be a challenge for long term care providers in many parts of the country. FEMA is now playing a primary national role in determining how PPE is distributed across the country. State and local governments are also playing a role in the supply and distribution of PPE.

There are no quick fixes to the national PPE shortage, however, AHCA-NCAL introduced Project N95, http://projectn95.org/. Project N95 is a coalition that formed to help link PPE suppliers with health care providers in need of PPE, including long-term care providers. Project N95 has a rigorous sourcing process that identifies suppliers and manufacturers who can support frontline workers with critical medical equipment that meets performance expectations of cost, quality, and delivery. They do the upfront front work to accelerate procurement decisions by reviewing:

- Factory & Product level certifications.
- Supplier registration, contacts, and other supporting documentation.
- Product documentation, including photos and videos of production and products, and regulatory status.
- Product pricing, MOQ, availability, capacity, and lead times.

- Customer reference checks using multiple verification points

Attached is a document that contains a couple of screen shots of how to navigate the AHCA website to submit a request for needed PPE.
In addition, VHCA members may reach out to Doran Hutchinson at VHCA -- https://www.vhca.org/nursing-facility-and-assisted-living-facility-covid-19-ppe-needs/ and let her know what you need. She is in frequent contact with vendors and other options for resources.

VDH Updated Guidance on Testing for COVID-19 VHD has revised its guidance on testing for COVID-19. Testing capacity at commercial, private, and hospital laboratories performing SARS-CoV-2 testing continues to increase in Virginia. As a result, in May, Virginia's state laboratory, the Division of Consolidated Laboratory Services (DCLS), will transition its services to support public health testing as outlined by the agency. Until May 31, 2020, if testing in the private sector is not available, clinicians may request testing for patients at DCLS by submitting the online COVID-19 Testing Request Form.

VDH Recommendation for Prioritizing SARS-CoV-2 Testing Private/Commercial
Lab Testing High Priority

- Hospitalized patients with symptoms
- Healthcare facility workers, workers in congregate living settings, and first responders with symptoms
- Residents in long-term care facilities or other congregate living settings, including correctional and detention facilities and shelters, with symptoms

Priority Persons identified by public health officials or clinicians as high priority

- Persons with symptoms of a possible infection with COVID-19, including fever, cough, shortness of breath, chills, muscle pain, new loss of taste or smell, vomiting or diarrhea, and/or sore throat.
- Persons without symptoms who come from racial and ethnic minority groups disproportionately affected by adverse COVID-19 outcomes-currently African Americans, Hispanics and Latinos, some American Indian tribes (e.g., Navajo Nation).
- Persons without symptoms who are prioritized by health departments or clinicians, including but not limited to: public health monitoring, sentinel surveillance, presence of underlying medical condition or disability, residency in a congregate housing setting such as a homeless shelter or long term care facility, or screening of other asymptomatic individuals according to state and local plans.

Public Health Lab Testing High Priority

- Outbreak investigation
- Selected contact investigations · Un-or underinsured persons with COVID-19 symptoms
- Worker and resident with COVID-19 symptoms in or newly arriving to congregate settings) long term care facilities, prisons, or jails) Priority · Public health monitoring · Sentinel surveillance · Community testing clinic

The above resources may be found at:

- https://www.vdh.virginia.gov/coronavirus/health-professionals/vdh-updated-guidance-on-testing-for-covid-19/
- https://www.vdh.virginia.gov/content/uploads/sites/182/2020/04/SARS-COV-2-Testing-Capabilities-Commercial-Labs.pdf
- https://redcap.vdh.virginia.gov/redcap/surveys/?s=EWFER7X7YX

5/5/20 CDC Testing Recommendation for Antibody Testing CDC does not recommend using antibody testing to diagnose acute infection. It is recommended to use a viral (nucleic acid or antigen) test to diagnose acute infection. https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html